

CIB 98-03 Class Deviation to 31.205-6(g)(3), Foreign National Severance Pay Under Professional Services Contracts

January 27, 1998

This CIB transmits a class deviation to FAR 31.205-6(g)(3) permitting the reimbursement of reasonable severance pay costs to professional service contractors employing foreign service nationals overseas. This CIB supplements CIB 96-15. USAID's exemption to the statutory FAR requirements is authorized under section 636(b) of the Foreign Assistance Act of 1961, as amended.

This class deviation applies only to program-funded contracts. Severance payments, whether for voluntary or involuntary separation, can be considered allowable only if required by local laws and only to the extent that payments do not exceed prevailing severance rates paid to comparable local employees and personal services contractors working for the applicable U.S. Embassy or Mission.

We will amend the AID Acquisition Regulation (AIDAR) to incorporate these requirements. Please insert FAR clause 52.237-9, "Waiver of Limitation on Severance Payments to Foreign Nationals" in contracts and solicitations when appropriate.

January 15, 1998

ACTION MEMORANDUM TO THE PROCUREMENT EXECUTIVE

THRU: M/OP/OD, James D. Murphy

FROM: M/OP/P, Kathleen J. O'Hara

Subject: Class Deviation from FAR 31.206(6)(g)(3), Cost Allowability for Severance Pay to Foreign Nationals Employed Under USAID Direct Contracts Abroad - OP-DEV-98-1c

Issue: USAID requires approval of a class deviation from cost principle 31.205-6(g)(3) in order to reimburse contractors, when necessary, for severance payments made to foreign nationals working under non-support services contracts abroad. Since most of our contracts are issued on a cost-reimbursement basis, not reimbursing contractors for legitimate costs of doing business would impair our ability to provide development assistance overseas.

Discussion: The cost principle at 31.205-6(g)(3) has statutory authority and implements 41 U.S.C. 256(e)(1)(M). In order to exempt USAID from the Government-wide Title 41 requirements, the Acting Assistant Administrator for Management (AA/M), under the General Delegation of Authority contained in ADS 103.5.10a(6)(b), has invoked Section 636(b) of the Foreign Assistance Act (FAA). This section of the FAA permits USAID to procure goods and services "...without regard to such laws and regulations governing the obligation and expenditure of funds of the United States Government as may be

necessary to accomplish the purposes of this Act." This class deviation will only cover program-funded contracts.

On March 13, 1996, you issued a blanket waiver permitting reimbursement of actual severance pay expenses for employees under operating expense (OE)-funded support service contracts; this action was authorized under FAR 37.113-1(a). The final step in this process is for you to approve a class deviation to FAR 31.205-6(g)(3) for non-support services contracts, and sign the attached CIB to inform the procurement community of this change.

We will modify the AIDAR accordingly. This class deviation will expire two years from the signature date, or when incorporated into the AIDAR, whichever is first. Attached is a copy of the Action Memorandum signed by the AA/M invoking the authority in FAA section 636(b). You are authorized to issue this class deviation in accordance with AIDAR 701.470(b)(1).

Recommendation: That you approve this class deviation by signing below, and sign the attached CIB to inform contracting staff of the deviation.

APPROVED: _____

DISAPPROVED: _____

DATE: _____